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1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 In re SFPP Rights-of-Way Claims

Case No. 8:15-cv-00718-JVS-DFM

4 **JOINT STATEMENT IN RESPONSE**
5 **TO MOTION FOR APPOINTMENT**
6 **OF PLAINTIFFS' LEADERSHIP**
7 **STRUCTURE**

8 Judge: Hon. James V. Selna
9 Date: November 2, 2015
10 Time: 1:30 p.m.
11 Courtroom: 10C – Santa Ana

12 Defendants SFPP, L.P., Kinder Morgan Operating L.P. “D,” and Kinder
13 Morgan G.P., Inc. (collectively, “Kinder Morgan”) and Union Pacific Railroad
14 Company do not oppose this motion on substantive grounds, but assert that the motion
15 is premature given the current status of the consolidated cases and does not appear to
16 create a more efficient structure.¹ Defendants do not object to appointment of lead
17 putative class counsel for purposes of efficiency. But Plaintiffs’ proposal does not
18 appear to be more efficient at this stage.

19 Undoubtedly, there are situations pre-certification where the appointment of
20 interim class counsel is necessary. As Plaintiffs note, the Manual on Multi-District
21 Litigation sets out some of the circumstances that may necessitate the appointment of
22 interim counsel to protect the putative class pre-certification including competition
23 among a number of lawyers for eventual class counsel appointment or “overlapping,
24 duplicative, or competing suits in other federal courts or in state courts.” MANUAL FOR
25 COMPLEX LITIGATION (FOURTH) § 21.11. But given that Plaintiffs do not point to any
26

27 ¹ Defendants do not agree with Plaintiffs’ factual and legal assertions in the motion,
28 and will dispute Plaintiffs’ allegations at the appropriate time.

1 special circumstances or increased efficiencies that would necessitate this move,
2 Plaintiffs' motion is premature.

3 Other courts have found similar motions to be premature when consolidated or
4 coordinated actions are still in the pleading and dispositive motion stages. *See In re*
5 *Nest Labs Litig.*, Case No. 14-cv-01363-BLF, 2014 U.S. Dist. LEXIS 115596 (N.D.
6 Cal. Aug. 18, 2014); *Yaeger v. Subaru of Am., Inc.*, Case No. 14-cv-4490, 2014 U.S.
7 Dist. LEXIS 182090 (D.N.J. Oct. 8, 2014); *Kuzian v. Electrolux Home Prods.*, 937 F.
8 Supp. 2d 599 (D.N.J. 2013); *Sajfr v. BBG Commc'n, Inc.*, 2011 U.S. Dist. LEXIS
9 18599 (S.D. Cal. Feb. 25, 2011). Just as in *Nest Labs Litig.*, Plaintiffs seek
10 appointment even though there is only one consolidated action with a soon-to-be-filed
11 consolidated complaint. 2014 U.S. Dist. LEXIS 115596, at *3-4. There are also no
12 "special circumstances" currently that would necessitate the appointment of interim
13 class counsel. *Accord Nest Labs Litig.*, 2014 U.S. Dist. LEXIS 115596, at *4 (noting
14 that Plaintiffs did not identify any "special circumstances" that would "warrant[] the
15 appointment of interim class counsel"); *Yaeger*, 2014 U.S. Dist. LEXIS 182090, at *6
16 (noting that Plaintiffs' counsel did not "identify particular issues/concerns relevant to
17 the orderly and efficient adjudication of this litigation on a putatively class basis").
18 There does not appear to be "a gaggle of law firms jockeying to be appointed class
19 counsel." *Nest Labs Litig.*, 2014 U.S. Dist. LEXIS 115596, at *4 (internal quotation
20 omitted); *see also Gedalia v. Whole Foods Mkt. Servs.*, 2014 U.S. Dist. LEXIS
21 137427, at *5 (S.D. Tex. Sept. 29, 2014) (noting that when interim counsel is
22 appointed it is often because multiple lawyers sought designation but that courts have
23 denied these motions "where no competition between law firms exist"). Plaintiffs do
24 mention in a footnote the *Elpidio* action that is currently being transferred for
25 consolidation in this Court. (Pls.' Mot. 3 n.2.) But Plaintiffs do not contend that there
26 have been any problems with coordination. Nor do Plaintiffs illustrate any prejudice
27 faced by the putative class by a lack of interim class counsel. *Accord Gedalia*, 2014
28

1 U.S. Dist. LEXIS 137427, at *4 (deciding whether prejudice to the class had been
2 demonstrated as part of determination on the necessity of interim counsel).

3 Rather than streamline the process, Plaintiffs' proposed leadership structure
4 includes five different law firms—every firm representing Plaintiffs in this matter
5 except Bottini & Bottini, Inc. Involving such a large number of firms in Plaintiffs'
6 leadership could lead to inefficiencies and duplication of effort. Further, Plaintiffs'
7 proposed list of responsibilities includes tasks that appear unnecessary, given the
8 limited number of cases involved, such as “Prepare and distribute to the parties
9 periodic status reports” and “Coordinate with members of the Plaintiffs' Executive
10 Committee and Liaison Counsel.” (Dkt. No. 73-1, Proposed Order.) Although these
11 activities may be appropriate for large multidistrict proceedings, with multiple
12 different parties and counsel, this is not such a case.

13 Due to the lack of uncertainty in roles or rivalry among firms, there would be
14 no efficiencies or benefit to appointing an interim plaintiffs' leadership structure so
15 early in the case. *Accord Nest Labs Litig.*, 2014 U.S. Dist. LEXIS 115596, at *4
16 (denying the motion, in part, because the court found it unnecessary “to appoint
17 interim class counsel merely to maintain the *status quo*”); *Yaeger*, 2014 U.S. Dist.
18 LEXIS 182090, at *6 (denying the motion for appointment of interim counsel in part
19 because all of the firms that represented the plaintiffs were also requesting
20 appointment as part of the leadership structure); *Kuzian*, 937 F. Supp 2d. at 620
21 (denying motion to appoint lead counsel because the two firms seeking appointment
22 were the only two firms representing the plaintiffs).

23 Therefore, any special circumstances outlined by Plaintiffs at this stage are
24 mere conjecture; and, for this reason, the Court should deny the motion without
25 prejudice as premature and not designed to produce efficiencies to the putative class.

26 Defendants do not take a position as to the adequacy of Plaintiffs' counsel at
27 this time, and reserve the right to do so in the future. Defendants also reserve the right
28

1 to oppose any request for attorneys' fees on any basis, including whether the work
2 performed prior to certification was reasonable or necessary.
3
4

5 Dated: October 9, 2015

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

By: /s/ Tammy B. Webb
TAMMY B. WEBB

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FILER'S ATTESTATION

Pursuant to Civil Local Rule 5-4.3.4(a)(2)(i), the undersigned attests that all signatories listed have concurred in the filing of this Stipulation.

Dated: October 9, 2015

COOLEY LLP

/s/ Summer J. Wynn

Summer J. Wynn (240005)

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